IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5426 of 1994
with
SPECIAL CIVIL APPLICATION No. 3600 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

CHANDRAKNAT K JOSHI

Appearance:

1. Special Civil Application No. 5426 of 1994
MR DG CHAUHAN for Petitioners
MR HASMUKH N SHAH for Respondent No. 1

2. Special Civil ApplicationNo 3600 of 1994
MRS DT SHAH for Petitioners
MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. In Special Civil Application No. 5426 of 1994, the petitioner-Board has brought under challenge three orders passed by the Labour Court, as under :-

(i) Ex-parte Award dated 26th May, 1992 passed by the Presiding Officer, Labour Court, Surendranagar in Reference (LCS) No. 300 of 1990 at Annexure-D;

(ii) Order dated 10th February, 1994 passed by the Presiding Officer, Labour Court, Surendranagar in Misc. Application No. 18 of 1992; and

(iii) Order dated 12th August, 1993 passed by the Presiding Officer, Labour Court, Surendranagar in Recovery Application No. 405 of 1992.

3. These three orders have been challenged by the petitioner-Board in Special Civil Application No. 5426 of 1994. In Special Civil Application No. 3600 of 1994, the respondent-workman has prayed for issuance of writ of mandamus with a direction to the respondent no. 1 & 2 therein to reinstate the petitioner in his service, in pursuance to an order dated 26th May, 1992 and also to direct the respondents to pay all monetary and non-monetary benefits, as if the services of the respondent-workman were not terminated and it is also further prayed in the said petition to direct the respondent no. 3 to enforce the recovery certificate dated 14th September, 1993 [Annexure E to the said petition] and also prayed for issuance of direction to pay sum of Rs. 1,68,618. 15 paise to the petitioner with 12% interest with effect from 14th September, 1993.

4. These two petitions arises mainly because of the ex-parte order passed by the Labour Court, Surendranagar in Reference (LCS) No. 300 of 1990. The said Award dated 26th May, 1992 has been passed by the Labour Court on the ground that though notices were served upon the petitioner Board, no written statement was filed and no one remained present before it, and therefore, the ex parte order was passed against the petitioner-Board. Learned advocate Mr. Chauhan has submitted that the respondent-workman was appointed on 31st December, 1981 as a Work-charge Clerk-cum-Typist [Gujarati] on purely temporary and ad hoc basis for a period of two months and on specific condition that his services can be terminated

at any time without any notice. Thereafter, on 25th March, 1982, two months further extension was granted upto 30th April, 1982 on the same terms and conditions, and thereafter again, further extension was granted on 31st May, 1982 for a period of three months on the identical terms. That the service of the respondent workman were terminated with effect from 30th June, 1982. Thereafter, the respondent-workman has raised an industrial dispute after the period of eight years on 25th May, 1990. The Labour Court has decided the reference and passed an ex parte award on 26th May, 1992 granting reinstatement with continuity in service to the respondent workman, with full backwages for the interim period. Thereafter, the petitioner-Board approached the Labour Court, Surendranagar by filing Misc. Application under Rule 26A for setting aside the said ex-parte award on the ground that there was a bona fide mistake on the part of the learned advocate in not remaining present during the proceedings. The said application was moved on 22nd July, 1992 and on the very same day, learned advocate had filed affidavit of Mr. J.C Joshi in support of the said Misc. Application. The concerned Executive Engineer had also filed an Affidavit supporting the stand of the petitioner-Board. The Labour Court on 12 August, 1993 allowed the Recovery Application on the basis of the ex-parte order dated 26th May, 1992. Whereas, on 10th February, 1994, the Labour Court had dismissed the Misc. Application filed by the petitioner-Board and thereafter on 11th April, 1993, the petitioner-Board has approached this Court.

During the course of admission hearing, this Court on 28th April, 1994 admitted the matter and granted interim relief by staying the operation of the ex-parte award; after hearing both the sides.

Mr. Chauhan, learned advocate appearing on behalf of the petitioner-Board has pointed out that one Shri C.M Shah was engaged by the petitioner-Board to represent and defend the case before the Labour Court at Surendranagar but due to some bonafide mistake on the part of the said learned advocate, he could not remain present before the Labour Court and this fact has been supported by the petitioner-Board by filing Misc. Application, before the Labour Court. Further, necessary affidavits of the learned advocate and Executive Engineer were also filed before the Labour Court. According to the learned advocate Mr. Chauhan, the said two affidavits have been ignored by the Labour Court and the long delay of eight years has also been ignored by the Labour Court, and therefore, according to him, the said

ex-parte award is required to be set-aside.

Mrs. Shah appearing for the respondent workman has submitted that if the petitioner-Board has chosen not to appear before the Labour Court inspite of the notices having been served and no written statement was filed and not remained present then in such circumstances, the Labour Court has rightly passed the ex parte order and similarly, the Labour Court has rightly passed the necessary orders in Recovery Application which is just and legal. As against this, Mr. Chauhan has pointed out that even though a detailed affidavit has been filed by the concerned advocate Shri J.C Doshi and the Deputy Executive Engineer pointing out the mistake committed by his junior, the Labour Court has not appreciated and considered the said fact.

I have heard the learned advocates in detail. Be that as it may, one thing is crystal clear that the advocate of the petitioner-Board failed to remain present before the Court below and it cannot be said that what would have been the fate of the reference had the entire materials related to the merits of the matter been produced before the Labour Court. It is also true that the cause of the petitioner Board before the Labour Court has been defeated on account of such inaction or conduct of the lawyer representing the petitioner-Board. In order to see that the truth must prevail, let the entire matter be considered by the Labour Court on the basis of record. And therefore, in the peculiar facts and circumstances of the case, the matter is required to be remanded to the Labour Court, Surendranagar with a direction to the Labour Court to appreciate and decide the entire matter afresh by giving liberty to the respective parties to lead evidence and make amendments; if any.

In view of these facts, before quashing the ex parte award passed by the Labour Court, Surendranagar, it is also necessary to consider one aspect that the ex parte award has been passed by the Labour Court on 26th May, 1992 and the Misc. Application has been rejected on 10th February, 1994 and recovery order was passed on 12th August, 1993 even though, till date after three proceedings the respondent workman has remained without the fruits of any of the orders passed by the Labour Court, and therefore, in larger interest of justice, atleast the respondent workman may get something after the four rounds of litigation from 1992 to 2000. Therefore, according to my opinion, ends of justice would be met if the petitioner Board is directed to reinstate

the respondent workman in service immediately and during the pendency of the reference, his service may be continued; subject to the result of the said reference. Accordingly, in view of the above observations, the ex-parte award dated 26th May, 1992 passed by the Labour Court, Surendranagar in Reference No. 300 of 1990 is quashed on condition that the petitioner Board shall reinstate the respondent-workman on the said post and also shall pay the prevailing scale of pay and allowances regularly to the respondent workman from the date of his reinstatement and his reinstatement shall continue till the reference in question is finally decided by the Labour Court, Surendranagar.

While parting, it must be mentioned that when the Award passed by the Labour Court dated 26th May, 1992 in Reference No. 300 of 1990 is quashed, naturally, the subsequent order dated 10th November, 1994 passed by the said Court in Misc. Application No. 18 of 1992 is also required to be quashed and set-aside. Similarly, the order passed in Recovery Application No. 405 of 1992 dated 12th August, 1993 is also required to be quashed and set-aside because the said Recovery Order is based on the ex parte order which is hereby quashed and set-aside by this judgment. Therefore, all the aforesaid orders passed by the Labour Court, Surendranagar are quashed and set-aside on the condition, as stated hereinabove.

Special Civil Application No. 3600 of 1994 is also based on same reliefs in respect to implementation of the ex parte award and the recovery order passed by the Labour Court. Therefore, once I am setting aside the ex parte award and also the order made in Misc. Application and also the order made in the Recovery Application, then naturally, this petition does not survive.

In view of the above observations, the following order is made :-

The ex parte award dated 26th May, 1992 passed by the Labour Court, Surendranagar in Reference No. 300 of 1990 and the Order dated 10th February, 1994 made in Misc. Application No. 18 of 1992 and the order dated 12th August, 1993 made in Recovery Application No. 405 of 1992 are hereby quashed and set-aside on condition that the petitioner-Board shall reinstate the respondent-workman immediately in service in his original post and also to pay monthly salary on the pay scale applicable to the cadre at par with the regular employees working on the said post and also pay current salary

which is prevalent at present in the petitioner-Board, and the service of the respondent-workman shall continue till the final adjudication of the Reference No. 300 of 1990 by the Labour Court, Surendranagar. Such reinstatement of the respondent workman is subject to the result of Reference No. 300 of 1990.

Accordingly, Labour Court, Surendranagar is directed to decide Reference No. 300 of 1990 afresh, in accordance with law, within a period of nine months from the date of receipt of the writ of this Order and by giving opportunity to both the sides to make amendment in their pleadings; if any, including opportunity to produce any document or other evidence. In doing so, nothing said or observed herein, this order shall affect the merits of the case of either of the parties before the Labour Court and the Labour Court shall pass the Award in accordance with law. The parties shall remain present before the Labour Court, Surendranagar on the given dates. No further notice will be required to be given by the Labour Court to any of the parties and the Labour Court shall decide the Reference at the earliest possible opportunity, but in no case later than nine months from the date the writ is served.

Registry is directed to send the writ of this order immediately to the concerned Court as well as the petitioner-Board. Accordingly, Special Civil Application No. 5426 of 1994 is allowed. Rule is made absolute. And, Special Civil Application No. 3600 of 1994 is hereby dismissed. Rule is discharged. No order of costs in both these matters.

[H.K Rathod, J.]

Prakash*